

These are the tentative rulings for civil law and motion matters set for Thursday, June 26, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, June 25, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. Telephone appearances through June 2014 will continue to be governed by the current Local Rules. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. M-CV-0056444 Capital Insurance Group vs. Hern, Keith, et al**

Plaintiff's Motion for Fees and Costs is continued, on the court's own motion, to July 17, 2014 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

**2. M-CV-0058702 Smith, Shaun vs. Wood, Katherine D.**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard on June 26, 2014 at 8:30 a.m. in Department 43.

Defendant Katherine Wood's motion to set aside default and default judgment is granted in part. Default in this action was entered against defendant on July 29, 2013. Motions for relief pursuant to Code of Civil Procedure section 473 must be filed within six months after entry of the judgment, order or proceeding from which relief is sought. *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980. Accordingly, the court may not set aside the default, as defendant's motion for relief was filed more than six months after entry of default.

However, the court may consider whether the default judgment, which was entered on November 20, 2013, should be set aside. The court may set aside a judgment without disturbing the default. *Jonson v. Weinstein* (1967) 249 Cal.App.2d 954, 958;

*Rutan v. Summit Sports, Inc.* (1985) 173 Cal.App.3d 965, 970-971. Such relief is appropriate where no grounds exist to set aside the default, but the default judgment entered is erroneous. *Id.*

In this case, default judgment was entered in favor of plaintiff in the principal amount of \$25,000. However, the complaint fails to disclose the amount of damages requested, and there is no indication that a statement of damages was personally served on defendant after service of the complaint. A default judgment for greater relief or a different form of relief than demanded in the complaint is beyond the court's jurisdiction. *Marriage of Lippel* (1990) 51 Cal.3d 1160, 1167; *Electronic Funds Solutions v. Murphy* (2005) 134 Cal.App.4th 1161, 1176. The default judgment in this case is void, as it grants monetary damages to plaintiff where the complaint fails to disclose the amount of damages being sought.

Based on the foregoing, the default judgment entered on November 8, 2013 is hereby set aside. However, defendant remains in default based on the default entered against her on July 29, 2013.

**3. M-CV-0060104 Burgett, Amanda vs. 7-Eleven Stores**

T. Troy Otus' Motion to be Relieved as Counsel for Amanda Burgett is granted and he shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon Amanda Burgett.

**4. M-CV-0060734 Northern Calif. Coll. Serv. Inc. vs. 5128 Entertainment Group**

Plaintiff's Motion to Strike Answer is denied. While the caption purports to request a motion to strike defendant's answer, the substance of the motion actually requests a judgment on the pleadings. The request, however, is unclear and insufficiently supported by an adequate legal and factual analysis.

The court, on its own motion, strikes defendant 5128 Entertainment Group, LLC's answer filed on May 14, 2014. It is well established that a corporation cannot appear in propria persona or through a corporate representative in a limited civil court proceeding. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141; *Garnett v. Blanchard* (2001) 91 Cal.App.4th 1276.) The plaintiff shall provide notice to defendant of this order.

**5. M-CV-0060846 Baltazar, Rosa M., et al vs. Machado, Edward J., et al**

The appearances of the plaintiffs are required on their Request for an Order Setting Aside Order Striking Plaintiffs' Complaint.

**6. M-CV-0061137 USA Multifamily Mgmt, Inc. v. Sandra Clements, et al**

The appearances of the parties are required on the hearing for defendant's Application for Stay of Execution.

**7. M-CV-0061302 Legue, Ron vs. McCarroll, Tiffany**

As an initial matter, the court notes that a clerk's default judgment was entered on May 13, 2014 despite defendant's pending motion to set aside the default. As this default judgment was inadvertently entered by the clerk, the court, on its own motion, sets aside the default judgment entered on May 13, 2014. The clerk shall give notice to plaintiff that the default judgment has been set aside.

Defendant's Motion to Set Aside Default is denied without prejudice as there is no proof of service in the file that comports with the service requirements of CCP§1013.

**8. S-CV-0030772 Spinal USA, LLC vs. Griffis, Lee**

Appearance required on June 26, 2014 at 8:30 a.m. in Department 40.

**9. S-CV-0030822 Cordier, Elaine, et al vs. The Forecast Group, et al**

Cross-Defendant Frontier Fence's unopposed Motion for Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

**10. S-CV-0032117 Allen, Francis, et al vs. Platinum Living Services, Inc.**

Defendants' Motion to Continue Trial Dates is dropped from the calendar. A Notice of Settlement of Entire Case was filed on June 24, 2014. The matter is set for an OSC re Dismissal on November 4, 2014 at 11:30 a.m. in Department 40. The clerk shall notice all parties of this OSC hearing.

**11. S-CV-0032640 Owens, Dawn Carol vs. Duncan, Debra Lynn**

Defendant's Motion to Compel Discovery

Defendant's unopposed motion is granted. Plaintiff shall provide verified responses and responsive documents, without objections, to defendant's form interrogatories, set one; special interrogatories, set one; and request for production of documents, set one on or before July 18, 2014.

Sanctions are denied because the motion was not opposed. (CCP§2030.290(c); 2031.300(c).) However, repeated conduct of failing to comply with discovery obligations

may lead the Court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

Defendant's Motion to Compel Deposition

Defendant's unopposed motion is granted. Plaintiff shall appear at a time, place, and location as noticed by defendant for her deposition. **Defendant** is also awarded sanctions in the amount of \$310.00 pursuant to CCP§2025.450(c)(1).

**12. S-CV-0032904 Schmidley, Valisa vs. Dance Hall Investors, Inc., et al**

Defendant's Motion to Compel Arbitration is granted. Plaintiff's objections are overruled in their entirety. Defendant's objections are overruled in their entirety. Defendant has met its initial burden by establishing the existence of the arbitration agreement and that the dispute is covered by the agreement. (*Rosenthal v. Great Western Financial Securities Group* (1996) 14 Cal.4th 394, 413-414.) Furthermore, it has been sufficiently established that the motion is properly before the court, was brought within a reasonable period of time, and the arbitration agreement is not unconscionable. The parties are ordered to arbitration and the matter is stayed pending arbitration.

An OSC re Status of Arbitration is set for December 2, 2014 at 11:30 a.m. in Department 40.

**13. S-CV-0033060 Gallaway, Steven Edward - In Re the Matter of**

The motion for retrieval of firearms is dropped from the calendar as no moving papers were filed with the court.

**14. S-CV-0033194 Campos, Ignacio, et al vs. Davey Tree Surgery Company**

Further Hearing on Sanctions Regarding Plaintiffs' Motion to Compel Further Responses

The court has carefully considered the supplemental briefing of the parties on the issue of sanctions and finds plaintiffs did not act with substantial justification or that the imposition of sanctions would be unjust. Defendant is awarded sanctions in the amount of \$2,200.00.

**15. S-CV-0033402 Margolis, Simon S., et al vs. Centex Homes of California**

Defendant's Motion for Consolidation is continued, on the court's own motion, to July 17, 2014 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

**16. S-CV-0033916 Gorgen, Jennifer, et al vs. Bayview Loan Servicing, LLC**

Defendants Bayview Loan Servicing and Seaside Trustee's unopposed Motion for Attorneys' Fees is granted and defendants are awarded \$10,309.00 in attorneys' fees.

**17. S-CV-0033972 Lacy, Carolyn, et al vs. Bank of America, N.A., et al**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall be heard in Department 43:

Defendants' Demurrer to the First Amended Complaint (FAC)

Ruling on Requests for Judicial Notice

Defendants' request for judicial notice, filed on March 27, 2014, is granted in its entirety. However, the court reiterates that "taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning." (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.)

As to defendants' subsequent request for judicial notice, filed on May 14, 2014, the request is denied. The court has discretion to accept new evidence in reply papers so long as the opposing party has an opportunity to respond. (*Alliant Ins. Services, Inc. v. Gaddy* (2009) 159 Cal.App.4th 1292, 1307-1308.) This request is denied since plaintiffs had no opportunity to review or address the documents subject to the request.

Ruling on Demurrer

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure §430.10(e).) A demurrer is also appropriate where the pleading is uncertain. (Code of Civil Procedure §430.10(f).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true *no matter how improbable the allegations may seem*. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The FAC, when read as a whole, is sufficiently pled to withstand demurrer and support the three causes of action.

Defendants shall file and serve their answer or general denial on or before July 11, 2014.

If oral argument is requested, defendants' request for telephonic appearance is granted. Counsel is informed arrangements for the telephonic appearance must be made through CourtCall pursuant to Local Rule 20.8.A.2. Further, effective July 1, 2014, all telephonic appearances will be governed by Local Rule 20.8 and further information is available at [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).

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